STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 22, 1999
v	No. 203622 Recorder's Court
DAVID A. SABIN, Defendant-Appellant.	LC No. 95-012441

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder (AGBH), MCL 750.84; MSA 28.279. The trial court sentenced defendant to a term of four to ten years' imprisonment. Defendant appeals as of right. We affirm.

I

Defendant first contends that the trial court erred in denying his motion to dismiss for violation of the 180-day rule. We review the trial court's attributions of delay for clear error. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998).

Defendant's trial did not take place until 344 days after the 180-day period commenced. The trial court attributed 123 days of the delay to defendant. The remaining 221 days were technically attributable to the prosecutor; however, because the prosecutor had made a good-faith effort to proceed to trial, the trial court held that defendant was not entitled to dismissal of the charges against him.

Defendant disputes the trial court's attribution of the forty-two days between July 12, 1996, and August 23, 1996, to him. Defendant's trial was scheduled to start on July 12, 1996, but was adjourned. The trial court attributed the delay to defendant because his attorney failed to appear. On appeal, defendant contends that he was not brought to court on July 12, 1996, and accordingly his trial could not have commenced on that day even if his attorney had appeared. However, because the

record is silent regarding the reasons for the adjournment and defendant's apparent absence from court, we cannot find that the trial court clearly erred in attributing the delay to defendant. See *id*.

Defendant also argues that the fourteen days between August 27, 1996, and September 10, 1996, should not have been charged to him. However, even assuming that these fourteen days should have been charged to the prosecutor, defendant has not shown that the trial court's ultimate conclusion that the prosecutor made a good-faith effort to proceed to trial is clearly erroneous.

Finally, defendant notes that after a hearing on December 4, 1996, at which he was found competent to stand trial, another forty-seven days passed before trial began on January 21, 1997. However, we find defendant's contention that the trial should have begun on December 4, 1996, immediately after the competency hearing, to be without merit.

In sum, defendant has not established that the trial court's attributions of delay or its finding that the prosecutor took good-faith action to ready the case for trial were clearly erroneous. Consequently, defendant was not entitled to dismissal of the charge because of a violation of the 180-day rule.

II

Defendant next argues that there was insufficient evidence adduced at trial to support his conviction for AGBH. When ascertaining whether sufficient evidence was presented at trial to support a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

The elements of AGBH are (1) an assault, that is, an attempt or offer with force and violence to do corporal hurt to another, coupled with (2) a specific intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). Intent may be inferred from all the facts and circumstances. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

In the present case, the complainant testified that defendant grabbed her arm and began to drive off while she dangled from the side of his vehicle. She was not able to extricate herself until defendant had accelerated to a speed of twenty to twenty-five miles per hour, at which point she "let go" and fell to the pavement. Defendant himself testified that the complainant, while intoxicated, placed herself in a position of danger by jumping on the running board of defendant's van and then letting go. Thus, despite the discrepancies in the testimony, there was no dispute that, as the trial court succinctly stated, "whatever happened, the defendant drove off with a person hanging onto the car." In other words, defendant either waited until he was traveling at a significant speed before releasing his grip on the complainant, or he accelerated his vehicle knowing that the complainant was hanging on the side. Under either scenario, a reasonable factfinder could find that the elements of AGBH were proven beyond a reasonable doubt. See *Carines, supra*.

Defendant also asserts that the requisite intent for AGBH was not established because the complainant suffered "no serious injury." We disagree. First, the infliction of a serious injury is not an element of AGBH, see *Bailey*, *supra*, and a reasonable factfinder could infer defendant had the intent to cause great bodily harm from all the facts and circumstances of this case, see *Nelson*, *supra*. Second, while the complainant suffered no permanent impairment, it is undisputed that when she fell from the side of defendant's vehicle to the pavement, she lost consciousness and did not regain her senses until she woke up in the hospital. We reject defendant's implicit characterization of this injury as trivial.

III

Defendant next argues that he was denied his right to a fair trial by the misconduct of the trial judge. However, because defendant did not object below to the trial court's actions, appellate review is precluded absent manifest injustice. See *People v Weatherford*, 193 Mich App 115, 121; 483 NW2d 924 (1992).

We find no evidence of manifest injustice. Although defendant asserts that the trial judge "simply took over a large part of the trial" through his questions to witnesses and interfered in the defendant's relationship with his attorney, our review of the record indicates that the trial judge merely acceded to defendant's request that he be allowed to take an active role in his own defense. That the trial judge consulted defendant with regard to some defense decisions did not interfere with the attorney-client relationship such that defendant was deprived of his Sixth Amendment right to counsel or improperly limit defendant's constitutional right to present a defense. Moreover, a trial judge is permitted to question witnesses in order to clarify testimony or elicit additional relevant information. *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996). Defendant's contention that the court had no business participating in a determination about which witnesses the prosecutor was obligated to produce is simply wrong. See *People v Burwick*, 450 Mich 281, 291; 537 NW2d 813 (1995). Defendant provides no evidence to support his assertion that the judge did not fulfill his promise to assume that the testimony of the missing witnesses would be adverse to the prosecutor. The remainder of the comments complained of by defendant, considered in context, do not demonstrate partiality or bias.

Defendant also asserts that defense counsel was ineffective because he failed to object to the misconduct of the trial judge. However, we have not found any improper conduct by the trial judge. Defense counsel was not required to raise a meritless objection. See *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997). With regard to defendant's claim that he "would have had a reasonably likely chance at acquittal" absent counsel's errors, defendant has not identified any errors that would demonstrate that the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms. See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Accordingly, his claim of ineffective assistance of counsel fails.

IV

Defendant next argues that he was denied a fair trial by prosecutorial misconduct. Defendant did not object at trial to the comments of which he now complains. To preserve for appeal an argument

that the prosecutor committed misconduct during trial, a defendant must object to the conduct at trial on the same ground as he asserts on appeal. In the absence of a proper objection, review is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Nantelle*, 215 Mich App 77, 86-87; 544 NW2d 667 (1996).

Defendant first complains that the prosecutor mischaracterized the complainant's testimony when he stated, "Defendant grabbed her and drove the van down the street approximately one house length where he let go of her . . . ." However, while the complainant testified that she fell when she "let go," she also stated that defendant "grabbed [her] arm" and began driving off, dragging her down the street with her arm in the window. She further testified that defendant was traveling at a speed of twenty or twenty-five miles per hour "before [she] could let go."[1] From this testimony, the prosecutor could reasonably infer that before the complainant let go, defendant released her, and the comment was therefore not improper. See *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant also asserts he was denied a fair trial when the prosecutor inaccurately summarized witness Sue Friend's testimony. However, because this minor error did not result in a miscarriage of justice, we decline to address the issue further.

V

Finally, defendant argues that the court's findings of fact were inadequate. Findings of fact are sufficient if it appears from the record that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). A trial court is not required to make specific findings regarding each element of a crime. *Id*.

After reviewing the trial court's findings of fact, we conclude that they are entirely sufficient. The court discussed the testimony of the witnesses in great detail, noted the discrepancies, and in the end stated that he found the testimony of the complainant and Friend to be credible. It is abundantly clear that the trial court was aware of the issues in the case. See *id*. Contrary to defendant's assertion, remand for additional findings is unnecessary because it would not facilitate appellate review. See *id*. at 134-135.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh

[1] The transcript contains the following passage from the complainant's testimony:

Q. Now, the fighting --

A. Somehow, [during] the scuffling we had at the van we ended up at the front of Sue's car. I believe after he hit me again he went to get in his van. I went to strike him and the my [sic] arm was at the door. So he grabbed my arm and he took off.

Q. In the door [or] through the window?

A. Through the window and he took off down the street, and I'm hanging from the window so I jumped --

Q. Was he going slow?

A. Well, you know, when he first took off, he had to go pretty fast.

Q. How fast would you estimate?

A. It happened so fast I can't say. 20, 25 miles an hour before I could let go.

Q. Was his car still moving?

A. Yes. When I let go of it.

Q. Now, were you dragged on the ground?

A. At first my feet were dragging so I jumped up on the running board.

Q. The running board.

A. And then it happened so fast and then I just let go.

Q. You let go.

A. And I don't remember after I hit the pavement, I don't remember. I was knocked unconscious.